

REMARKS

Claim 1 has been amended to more clearly define the invention, in that the apparatus analyzes the materials as they are drawn past the illuminated volume. Dependency in claim 5 has been corrected. Claim 9 has been cancelled. Claims 10 and 11 have been corrected in view of the canceling of claim 9. Claim 35 has been amended as suggested by the Examiner.

The claims are all rejected based upon the teaching of Goix (primary reference) in view of one or more secondary references and principally the teaching of D'Autry combined with Goix.

A careful study of the Examiner's understanding of the teaching of Goix leads applicant to believe that the Examiner reads into Goix more than it actually teaches. Goix teaches a capillary through which a fluid sample is injected and flows past an analyzing volume. In Goix, a syringe 208 contains the sample and is connected to one end of the capillary 202 to inject the sample into the capillary tube past an analyzing volume 204. The sample then passes into a dump 212 (page 3, paragraph 10). The sample is drawn into the syringe and then the syringe is placed into the syringe pump and the sample is then injected in the capillary (page 6, lines 18-26). It appears that the Examiner has interpreted this reference as teaching that the syringe 208 draws fluid from the reservoir 212 into the syringe and is then operated to return the same fluid through the capillary. Such is not the case, as pointed out above. Applicant notes that the D'Autry is cited for the teaching of drawing a sample through the open end of a conduit. D'Autry does not teach, or suggest a capillary. In fact, he teaches a pipette 12 connected to a conduit 20. The pipette is raised and lowered to control its emersion into a sample. By definition a pipette is a measuring instrument used to measure or transfer precise volumes of liquid by drawing the liquid up into the graduated tube. In D'Autry, the sample is not drawn past an analyzing volume where it is analyzed, it is drawn past the volume and then pumped back through the volume for analysis.

Combining the teaching of the two references does not result in an apparatus which pumps or draws fluid into the suspended end of a capillary and the fluid is analyzed as it flows past an analyzing volume. This structural difference is clearly brought out in claim 1. The claim is for an elongated capillary with a pump connected to one end of the capillary with the other end of the capillary suspended. A light source for illuminating a predetermined volume whereby, the fluid flowing past the illuminated volume is caused to fluoresce and a detector for detecting the

fluorescence. Goix does not teach a pump connected so as to draw sample through a suspended capillary. Combining D'Audry with Goix does not result in a particle analyzing apparatus in which sample fluid is drawn past an analyzing volume. D'Audry draws the fluid past the analyzing volume and then reverses the pumping action to cause the fluid to pass back into the analyzing volume for analysis. Clearly combining the teaching of these two references does not result in an apparatus where a pump draws the fluid through a capillary, past an analyzing volume.

The remaining claims are dependent from claim 1 and together with claim 1 define a new combination which is not achieved by combining the additional references with the primary reference or the primary reference and D'Audry.

In view of the foregoing favorable action is respectfully requested.

The Commissioner is hereby authorized to charge any fees associated with this communication to our Deposit Account No. 50-2319 (Order No. A-69516/AJT (463032-23)).

Respectfully submitted,


For Aldo J. Test, Reg. No. 18,048

DORSEY & WHITNEY LLP
Suite 3400, 4 Embarcadero Center
San Francisco, California 94111-4187
Tel: (650) 494-8700
Fax: (650) 494-8771